

CLAIM OF YOSHIHARU S. KATAGIHARA

[No. 146-35-4534. Decided October 31, 1950]

FINDINGS OF FACT

1. This claim, in the amount of \$874.75, was received by the Attorney General on June 7, 1949, and involves a loss resulting from the gift of the following personal property owned and possessed by the claimant: 1 bedroom suite; 2 wool rugs; about 16 square feet of linoleum; 1 dental laboratory table; 1 library table; 15 dining room chairs; one used gas range; and 1 dinner set of domestic china for 8 persons. The claim also involves a loss caused by the theft from storage of certain articles of personal property owned and possessed by the claimant and described as follows: 1 wool rug; 1 small hand-wind Columbia phonograph; 1 large silver-plated meat platter; two sets of Rogers silver-plated dinner ware, each for 12 persons; 75 Japanese phonograph records; 11 dental and medical books; 1 "Perfection" casting machine; and miscellaneous general tools. In addition, the claim involves a loss arising from the expense incurred by claimant in transporting certain property to the place of storage in 1942 and also for carrying certain personal property described as dental tools, equipment and accessories, from their place of storage to his present address in 1946. Claimant is a married man living with his wife and all of the property involved in the claim was community property. Claimant and his wife were both born in Japan of Japanese parents, the claimant at Hiroshima on December 3, 1881. At no time since December 7, 1941, has claimant or his wife gone to Japan. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 1659 Webster Street, San Fran-

cisco, California, and were living at that address when they were evacuated on April 28, 1942, under Civilian Exclusion Order No. 20, Headquarters Western Defense Command, issued April 24, 1942, pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Tanforan Assembly Center, California, and thence to the Central Utah Relocation Center at Topaz, Utah.

2. At the time claimant was evacuated, he decided not to take any of the above-described property with him to the assembly center and shortly before his evacuation he made a gift of certain articles to a close friend. At that time drayage and storage of such property were available to claimant at Government expense. He was an intelligent and well-educated person and admits that he had heard rumors about such storage, the availability of which had been generally published. The fair and reasonable value of the property that was given away at that time was \$91.50.

3. Claimant placed the balance of his property in storage in a dwelling house and his action was reasonably prudent under the circumstances which confronted him. Claimant decided against sale because of the unreasonably low prices offered and because he intended to resume later the practice of dentistry. At some time in late April or May 1942 a portion of this property was stolen without fault of the claimant. Its fair and reasonable value at the time was \$143.44. The place of storage was about 40 miles from San Francisco.

4. Claimant claimed \$23 for carriage charges on the above property to its place of storage. Such expenditure was unnecessary, since free transportation at Government expense was available, the availability of which had been generally published.

5. The remainder of the stored property was carried in May and June 1946, after claimant's return from the relocation center, from its place of storage to claimant's present address. The cost of carriage was \$17.60, which was reasonable in amount.

6. Claimant sustained a total loss of personal property, as found in paragraphs 3 and 5 above, in the amount of \$161.04, which loss was a reasonable and natural consequence of his evacuation and has not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant and his wife were both jurisdictionally eligible to claim. This claim includes all interest of the marital community in the subject property, for the wife having made no claim and the husband having powers of management and control under California law, he may therefore claim for the whole. *Tokutaro Hata, ante*, p. 21.

On the facts found in paragraph 2, no allowance can be made for property given away. A standard of due diligence in the circumstances must be met in all cases. *Toshi Shimomaye, ante*, p. 1.

On the facts found in paragraph 3, the fair market value of \$143.44 of the stored and stolen goods is allowable. *Akiko Yagi, ante*, p. 11.

The claim for carriage of property to the place of storage in April 1942 is not allowable, for after March 29, 1942, "drayage facilities were provided in connection with each controlled evacuation operation. The pick-up was made at the evacuee's residence, place of business, or wherever the goods tendered for storage was situated" (*Report of the Federal Reserve Bank of San Francisco * * * on its Operations in Connection with Evacuation Operation * * * during 1942*, p. 15), and claimant was negligent in not availing himself of this service. It is to be noted with reference both to this expense and the gift mentioned in paragraph 2 above that claimant was served with a copy of the tentative adjudication disallowing those items upon substantially the same grounds but, although represented by counsel, claimant elected not to interpose objections to the factual inferences that have been drawn against him.

The claim for carriage from the place of storage to claimant's residence in the spring of 1946, on the other hand, is allowable. Claimant, although discharged from the relocation center in March 1945, was unable to find a suitable house in San Francisco until the spring of 1946 when drayage at Government expense was no longer available, February 28, 1946, being the last day for receiving applications for shipment of property in private storage or use. Only bona fide hardship cases were excepted, and claimant's does not fall within this category. See United States Department of Interior, WRA pamphlet, *The Wartime Handling of Evacuee Property*, p. 85. Carriage from the place of storage is the logical sequence of storage itself, the cost of which is allowable, *Frank Kiyoshi Oshima, ante*, p. 24; for without carriage to the claimant's residence, the claimant cannot use the property of which the evacuation has temporarily deprived him. It follows that expenses so incurred by the claimant, if no Government recourse was open to him, is "a reasonable and natural consequence" of the evacuation. Since the farmhouse used as a place of storage was about 40 miles from San Francisco, it is doubtful, regardless of the date of the property's removal, whether any Government recourse would at any time have been open to the claimant, for the War Relocation Authority required that "all Government shipment shall be via the most economical means" (*Manual*, § 100.3.8E), and "evacuees will be expected to pick up all property transported for them hereunder at the nearest point of relocation except where carrier makes door delivery" (*loc. cit., supra*), and where the "place of private storage and the evacuee's point of relocation is within reasonable trucking distance therefrom in the judgment of the * * * transportation officer (* * * ordinarily * * * 25 miles), the evacuee shall furnish his own transportation * * *." (*loc. cit., supra*). The same language is repeated in the *Manual*, § 150.9B.1E (last 3 paragraphs).